

**FILED**

**FEB X 8 2008**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

#4

PHILLIP J. GREENE,

Petitioner,

v.

HARTLEY, Warden,

Respondent.

No. C 08-0714 MMC (PR)

**ORDER OF DISMISSAL; GRANTING  
LEAVE TO PROCEED IN FORMA  
PAUPERIS**

**(Docket Nos. 2 & 3)**

On January 30, 2008, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Included with the petition is a "Motion to File Newly Exhausted Claim Via Second Petition – Abuse of Discretion by Sentencing Court." In said motion, petitioner states he is seeking leave to proceed with a second petition pursuant to 28 U.S.C. § 2244(b). Petitioner characterizes the instant petition as a second petition because the petition contains a newly-exhausted claim concerning sentencing error in connection with petitioner's 2003 conviction in Santa Clara County Superior Court; petitioner currently has pending in this court an earlier-filed petition challenging the validity of the same 2003 conviction. See Greene v. Powers, No. C 05-3433 MMC (PR).

The Court will deny petitioner's motion to proceed with his newly-exhausted claim in the instant petition. Petitioner's earlier-filed petition challenging the validity of petitioner's 2003 conviction is still pending; thus, his challenge to the validity of the sentence arising from the 2003 conviction should be brought in that petition.

Accordingly, petitioner's motion to file a second petition containing his newly-

**FILED**

**FEB X 8 2008**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PHILLIP J. GREENE,

No. CV-08-0714 MMC (PR)

Petitioner,

**JUDGMENT IN A CIVIL CASE**

v.

HARTLEY, Warden,

Respondent.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS SO ORDERED AND ADJUDGED** petitioner's motion to file a second amended petition containing his newly-exhausted claim is hereby **DENIED**, and the instant petition is hereby **DISMISSED**.

Dated: February 8, 2008

Richard W. Wieking, Clerk

*Tracy Lucero*

By: Tracy Lucero  
Deputy Clerk

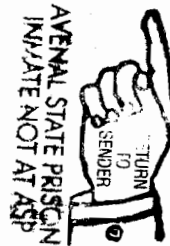
OFFICE OF THE CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

66 FEB 25 2008  
**FILED**  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FEB 25 2008

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA



Philip Jason Greene



UNITED STATES POSTAGE  
02 1A  
0004329882  
MAILED FROM ZIP CODE 94102  
**\$ 00.58<sup>0</sup>**  
FEB 11 2008  
FIRST CLASS PERMIT NO. 111111 SAN FRANCISCO, CA 94102